AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.M.P. No. 33/2006

PETITIONER R.S. Subramaniyam

Versus

RESPONDENT The State of Chhattisgarh (M.P)

POST FOR ORDER ON 13-11-2007

Sd/-
Dhirendra Mishra
Judge

(75)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.M.P. No. 33/2006

PETITIONER — R.S. Subramaniyam, Branch Sales Manager, Hindustan Lever Limited, Ilaco House, Second Floor, Sir PM Road, Mumbai

Versus

RESPONDENT — The State of Chhattisgarh (M.P.), through R.C. Yadav, Food Inspector, through Food & Drugs Administration Department, Raigarh, Chhattisgarh

Present:

Mr. Jagat Sher Singh, Advocate with Shri Neeraj Mehta, Advocate for the petitioner.

Mr. G.K. Beriwal, Dy, Advocate General for the State.

ORDER
(Delivered on 13/11/2007)

Dhirendra Mishra, J

This petition under Section 482 of Cr.P.C. for quashing of the Complaint Case No. 963/2000 pending in the Court of Chief Judicial Magistrate, Jashpur for offence punishable under Section 7/16(1)(a) of the Prevention of Food Adulteration Act, 1954 (for short, hereinafter referred to as the Act) has been filed by the petitioner on the ground that the petitioner has been denied of his right under Section 13(2) of the Act of getting the sample of the food article analyzed by the Central Food Laboratory.

2. Briefly stated the facts necessary for adjudication of this case are that the respondent No. 2 – the Food Inspector lifted a sample of Milkana Anik Ghee on 31st March 2000 from the shop of accused Ramesh Chandra Gupta, proprietor of firm Annapurna Bhandar, Duldula and sent the same for analysis to Public Analyst, Bhopal on 1-4-2000. The sample of the pure Ghee was packed in a sealed container and the same was manufactured by Hindustan Lever Limited. The petitioner accused is nominee of the Hindustan Lever Limited. Accused No. 1 expressed that he purchased the food article from M/s

(76)

Ramdhan Agrawal, however no purchase bill was produced by him even then intimation of sampling was sent to M/s Ramdhan Agrawal, Patthalgaon also, however, he also did not furnish any information. The Public Analyst vide his report dated 10-5-2000, informed the Local Health Authority, Raigarh that the sample of Milkana Anik Pure Ghee does not conform to the standard. After obtaining sanction from the competent authority, a complaint was filed on 20-7-2000 against the accused persons after sending registered notices dated 5-7-2000 to the accused persons, informing them that the food sample was found adulterated by the Public Analyst, complaint is to be filed on 20.7.2000 in the Court of C.J.M. and if they are unsatisfied with the report of the Public Analyst, they can get the sample analyzed through the Central Food Laboratory by filing an application for sending the second food sample to the Central Food Laboratory for analysis.

3. On 20-7-2000, accused Ramesh Chandra Gupta appeared before the Chief Judicial Magistrate and furnished bail, however the applicant did not appear despite service of summons and, therefore, bailable warrant was issued against him. On 8-8-2000 on application under Section 13(2) of the Act of the accused Ramesh Chandra Gupta, it was directed that second sample of the Food Article be sent for Analysis to Central Food Laboratory, Gaziabad on accused depositing expenses of Rs. 1000/-. The Central Food Laboratory, Gaziabad returned the memo dated 17-8-2000 and draft of Rs. 1000/- and communicated that as per notification No. 240 (E) dated 5-4-1999, the sample received from the State of Madhya Pradesh is to be analyzed by the Central Food Laboratory, Mysore. The trial Court on 17-7-2002 directed the accused to revalidate the draft as validity of the draft had expired. The above order was further reiterated on 30-6-2003. On 8-11-2005, the defence was directed to take necessary steps so that the second sample may be sent for analysis to Central Food Laboratory, Calcutta. On this date, the trial of the accused No. 2 was separated and he was declared absconder and permanent warrant of arrest was issued against him. On 4-1-2006, accused Ramesh Chandra Gupta filed an application under Section 19(2) of the

77

Act mentioning therein that he had purchased the food article from M/s Ramdhan Agrawal through cash memo and the cash memo contained warranty. After recording the statement of the accused, the trial Court allowed the application and discharged the accused Ramesh Chandra Gupta on 9-3-2006.

4. Learned counsel for the petitioner submitted that the sample was lifted on 31-3-2000 and the food article is Anik Pure Ghee, a milk product. Quality of the milk product deteriorates with time. On the application of accused Ramesh Chandra Gupta, second sample of the food article was sent for analysis to Central Food Laboratory, Gaziabad, however, the same was returned with the remark that the food samples lifted in the State of Madhya Pradesh are to be analyzed by Central Food Laboratory, Mysore and thereafter the article was not sent to Central Food Laboratory, Mysore for analysis. Seven years have elapsed since lifting of samples and therefore, it would be an exercise in futility if the trial is further continued as even if the sample is forwarded for analysis at this late stage, it would serve no purpose as by the lapse of time, the sample which is a milk product no longer remains fit for analysis, thus the accused persons have been denied of their valuable right to get the food sample analysed through Central Food Laboratory because of inaction on the part of the complainant. Reliance is placed on **State of Haryana –v- Unique Farmaid P. Ltd and others**[1] , , **Chetumal –v- State of M.P. and another**[2], **T.V. Usman –v- Food Inspector, Tellicherry Municipality, Tellicherry**[3], **Suresh Narain –v- Food Inspector and another**[4], and **Suresh Narayanan and others –v- State of M.P.**[5] **Municipal Corporation of Delhi –v- Ghisa Ram**[6]

5. On the other hand, learned counsel for the State has opposed the petition.

6. From the material available on record, it is evident that the complaint was filed against the applicant and the co-

---

[1] 2000 Cri.LJ 2962,
[2] 1981(II) Prevention of Food Adulteration Cases (SC) 280
[3] AIR 1994 SC 1818
[4] 2003(2) MPLJ 120
[5] 2003(3) MPLJ 60
[6] AIR 1967 SC 970

(78)

accused Ramesh on 20-7-2000 with a prior intimation to the accused persons about filing of the complaint and the matter was taken on 20-7-2000. The petitioner remained absent despite service of summons and in these circumstances bailable warrant for procuring his attendance was issued by the Chief Judicial Magistrate. The application under Section 13(2) of the Act filed by the co-accused Ramesh Chandra Gupta was allowed and the second sample of the food article was sent for analysis to Central Food Laboratory, Gaziabad which was subsequently returned without analysis along with original draft with a note that the sample is to be analyzed by Central Food Laboratory, Mysore, however the validity of the draft submitted by the accused had expired and the accused Ramesh Chandra Gupta was directed to revalidate the draft so that the food article may be sent to Central Food Laboratory, however no steps were taken by accused Ramesh Chandra Gupta and ultimately an application preferred by him in the year 2006 under Section 19(2) of the Act was allowed and the accused was discharged on the basis of cash memo filed by the said accused purportedly given by M/s Ramdhan Agrawal, Patthalgaon which also contained warranty clause. It is also evident that despite issuance of bailable warrant on many occasions the same were not returned after execution and ultimately the Chief Judicial Magistrate separated the case of the applicant by declaring him absconder and issued permanent warrant of arrest against him.

7. In the matter of **State of Haryana –v- Unique Farmaid** [1], considering that no action was taken by the Inspector to have sample retested from the Central Insecticides Laboratory as required under Section 24 of the Act and thereby the accused was denied the valuable right to have the sample tested from Central Insecticides Laboratory and in the circumstances, quashment of the criminal complaint was upheld.

8. In the matter of **Chetumal**[2], the second sample of the oil was sent to the Director, Central Food Laboratory who reported that the article of the food was adulterated, the report also mentions that specimen of impression seal sent to him did not tally with the seal of the container in which the sample of oil was sent to him, and in view of the objection of the accused,

(79)

the report of the CFL was excluded as the sample of the seal did not tally with the seal over the container however, the trial Court convicted the appellant on the basis of the report of the Public Analyst and in these circumstances, it was held that the report of the Public Analyst is superseded by the report of CFL and since CFL report is excluded from the evidence, the conviction of the appellant cannot be sustained.

9. In the matter of **T.V. Usman**[3], the Hon'ble Supreme Court interpreting the Rule 7(3) of the Prevention of Food Adulteration Rules, 1955 which casts a duty upon the Public Analyst to submit the result of analysis to the Local Health Authority within 45 days from the date of receipt of the sample, it was held that the same is a procedural provision meant to speed up the process of investigation on the basis of which the prosecution has to be launched. It is directory and not mandatory. The Supreme Court further observed that where the right of the accused conferred under Section 13(2) of the Act to get the second sample analyzed through CFL is prejudiced as the same become unfit for analysis due to decomposition with the passage of time or for any other reason attributable to the lapses on the side of prosecution, that valuable right would stands denied and that would constitute prejudice to the accused entitling him to acquittal but mere delay as such per se will not be fatal to the prosecution case.

10. In the matter of **Suresh Narain –v- Food Inspector and another**[4], the High Court of Madhya Pradesh considering the fact that the sample of the ice cream not found fit for analysis held that it was a case of no evidence and therefore, it would be futile exercise to allow the trial to continue.

11. In the matter of **Suresh Narayanan and others –v- State of M.P.**[5], considering the fact of that case that the adulterated ice cream is a milk product which gets deteriorated within a period of 10 months from the date of lifting, considering the delay in constitution of complaint and thereby considering that valuable right of the petitioner under Section 13(2) of the Act has been infringed, held that allowing the prosecution would be

nothing but an abuse of process of law and quashed the prosecution.

12. In the matter of **Municipal Corporation of Delhi –v- Ghisa Ram**[6] the Hon'ble Supreme Court has held that valuable right is conferred to the accused under Section 13(2) of the Act to get the second sample analyzed by the Director of Central Food Laboratory. The prosecution is to proceed in such a manner that the above right is not denied to him as the certificate of the Central Food Laboratory supersedes the report of Public Analyst and is treated as conclusive evidence of its contents. Where the right is denied on account of deliberate conduct of the prosecution in his trial and it is so seriously prejudiced then it would not be proper to uphold his conviction on the basis of the report of the Public Analyst. Even though that report continues to be evidence in case of the facts contained therein, however in paragraph 8 of the above judgment, it has been held thus:-

> *"We are not to be understood as laying down that, in every case where the right of the vendor to have his sample tested by the Director of the Central Food Laboratory is frustrated, the vendor cannot be convicted on the basis of the report of the Public Analyst. We consider that the principle must, however be applied to cases where the conduct of the prosecution has resulted in the denial to the vendor of any opportunity to exercise this right. Different considerations may arise if the right gets frustrated for reasons for which the prosecution is not responsible."*

13. In the light of the above principles of law laid down, if the facts of the present case are taken into consideration, it would be evident that the sample was taken on 31st March 2000 and the same was sent for analysis to Public Analyst on 1st April 2000 i.e. the next date, the report of the Public Analyst dated 10-5-2000 was received on 17-5-2000. Information in this regard as required under Section 13(2) of the Act was sent to the accused persons through registered post calling upon them to appear on 20.7.2000 in the Court of C.J.M., however, the

(21)

applicant did not appear before the trial Court despite service of summons and ultimately, he was declared absconder on 8-11-2006, the co-accused did not comply with the direction of the Chief Judicial Magistrate and did not deposit the revalidated draft for sending the specimen to CFL, Mysore after the same was received back from CFL, Gaziabad without analysis, however, accused Ramesh Chandra Gupta was subsequently discharged in the year 2006 by the trial Court, the above circumstances clearly indicate that the applicant who is the nominee of manufacturer of the adulterated food article did not exercise his right under Section 13(2) of the Act as he did not make any application to the Court within 10 days from the date of receipt of copy of the report to get the second sample kept by the Local Health Authority analyzed by the Central Food Laboratory.

14. In view of the above facts, the prayer of the petitioner that his prosecution should be quashed as he was denied of his valuable right under Section 13(2) of the Act of getting the second sample of food article analyzed by C.F.L., cannot be accepted.

15. In the result, the petition for quashing the complaint is without any substance and the same deserves to be dismissed and is accordingly dismissed.

Sd/-
Dhirendra Mishra
Judge
13.11.2007

Pathak/-